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FISCAL IMPACT STATEMENT

LS 6958

BILL NUMBER: SB 369

NOTE PREPARED: Jan 5, 2013

BILL AMENDED:

SUBJECT: Public Records.

FIRST AUTHOR: Sen. Wyss

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Withholding of Public Records from Disclosure:* This bill allows a public agency to withhold from public disclosure records received by the agency from the federal government that are confidential under the federal Freedom of Information Act (FOIA) or designated by an agency of the federal government as Sensitive But Unclassified Information.

Refusing to Confirm or Deny the Existence of Records: The bill allows a public agency to refuse to confirm or deny the existence of investigatory records of law enforcement agencies or Sensitive But Unclassified Information received from the federal government, if the fact of the existence of the information would: (1) impede or compromise an ongoing law enforcement investigation or endanger an individual; or (2) reveal information that would have a reasonable likelihood of threatening public safety. It allows a public agency to refuse to confirm or deny the existence of a record the disclosure of which would expose vulnerability to terrorist attack, if the fact of the record's existence or nonexistence would reveal information that would have a reasonable likelihood of threatening public safety. The bill also allows a person to file an action in court to appeal an agency's refusal to confirm or deny the existence of a record.

Records Requested from Agencies not Creating the Records: The bill provides that if a record is requested from a public agency other than the agency that created the record, the public agency that receives the request may: (1) refer the record to the creating agency for that agency's review and recommendation as to the confidentiality of the information; (2) transfer the records request to the local or state public agency that created the record for a direct response; or (3) if the originating agency is an agency of the federal government, direct the person to request the information directly from the federal government under the FOIA.

Effective Date: Upon passage.

Explanation of State Expenditures: *Records Requested from Agencies not Creating the Records:* This bill provides options that agencies may employ to handle requests of records that originated from other agencies. Any impact on agencies will depend upon administrative decisions.

Refusing to Confirm or Deny the Existence of Records: This bill allows agencies to refuse to confirm or deny the existence of certain records. Any impact on agencies will depend upon administrative decisions.

Background Information - Under IC 5-14-3-2 "public agency" means the following:

- (1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.
- (2) Any county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town, political subdivision, or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
 - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the State Police Department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the Alcohol and Tobacco Commission, conservation officers of the Department of Natural Resources, gaming agents of the Indiana Gaming Commission, gaming control officers of the Indiana Gaming Commission, and the Security Division of the State Lottery Commission.
- (7) Any license branch staffed by employees of the Bureau of Motor Vehicles Commission under IC 9-16.
- (8) The State Lottery Commission established by IC 4-30-3-1, including any department, division, or office of the Commission.
- (9) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the Commission.
- (10) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the Commission.

Explanation of State Revenues:

Explanation of Local Expenditures: Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

Explanation of Local Revenues:

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources:

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